THE LAW OF THE AIR. Three Lectures delivered in the University of London. By Harold D. Hazeltine. London: University of London Press. 1911. pp. vii, 152.

This work is unique among law books. A legal writer generally undertakes to state what has already been settled as law. The principal purpose of the present publication is to state legal questions which are likely to arise in future. "The recent rapid development" "of aerial navigation" presents problems of great importance, both in international law and private law. And, as to the solution of these problems, there is no universal agreement on the part of statesmen, and very little in the way of decision on the part of judges.

It will surprise many persons to learn how much some of the new problems have already been discussed by individual jurists, and been made the subject of debate by learned bodies. An international committee is attempting to frame a draft "code of the air"; "and it has already begun the publication of a monthly review devoted to the legal problems of aerial locomotion." A draft bill respecting aerial navigation has been drawn by members of the American Bar Association. The leading theories thus far advanced are clearly summarized by Mr. Hazeltine in a very readable form.

One of the principal points in dispute is whether the prevailing doctrine as to the freedom of the ocean should be applied to the air space above the earth. Should the state be held to have ownership of, or sovereignty over, the entire air space above the earth; or no sovereignty whatever over any part of it; or a sovereignty limited to a zone of a certain height upon "the analogy of the three-mile maritime belt"? (See p. 25.) This "fundamental problem" is discussed in the First Lecture.

Mr. Hazeltine points out the lack of perfect analogy between the ocean and the air space (pp. 14, 15, 24, 25, 41–43). He thinks that the state does not have "ownership" of the air space (p. 40). But he thinks that the state has sovereignty over the entire air space (pp. 44–46, 51). And he believes that the use of this air space by aliens is a matter which can best be regulated by international agreements (pp. 31, 37, 143, 144).

Mr. Hazeltine's Third Lecture is largely occupied with a statement of the proposed rules of international law, in regard to the use of both wireless telegraphy and air vehicles in time of war, — what rules have been proposed and by what countries adopted, what restrictions should be imposed upon belligerents and what upon neutrals. Mention is also made of proposed governmental regulations of the use of airships in time of peace; some regulations having special reference to the safety of passengers, and other regulations with a view to the safety of inhabitants of the district over which flight is attempted (pp. 128–135). The author foresees that "the marking out of the great aerial routes across the territories of states will become a necessity"; and also that "rules of the road will have to be established" (p. 134).

Practising lawyers will be especially interested in Mr. Hazeltine's Second Lecture, which deals with matters of "private law"; such as the correlative rights of landowners and aeronauts, and the liability of the latter for actual damage occurring without fault on their part. These questions are, in a great degree, still unsettled. Until quite lately, one could find in the reports only "a few scattered observations thrown out almost at random, incidentally uttered by judges dealing with cases which were in essence quite different."[1]

The landowner cannot safely rely on the old maxim, *Cujus est solum, ejus est usque ad cœlum*, as furnishing a satisfactory *ratio decidendi*. That maxim, taken in its literal and unqualified sense, is not likely to be recognized at the present time as a complete statement of the law.

Two theories are prominent: One, that the air space above the earth belongs

[1] See 22 Juridical Rev. 103.

to the public; the other, that it belongs to the landowner. But each theory is subject to provisos and limitations which, in the great majority of cases, would bring about the same result, whichever theory is adopted. The public right, under the first theory, is subject to be exercised with due regard to the interests of the landowner. On the other hand the ownership of the landowner, under the second theory, is burdened by a right of passage for the public. The German Civil Code, Article 905, states that the right of the owner of the land extends to the entire air space above the surface; but adds: "The owner may not, however, forbid interference which takes place at such a height . . . that he has no interest in its prevention."

Mr. Hazeltine inclines to the second theory, qualified as above stated (pp. 76–78). And a similar view is taken by Mr. Valentine.[2] Whichever theory, with its accompanying restrictions, is adopted, the result is likely to be practically as follows:

(1) If the airship comes in contact with the land, or with objects upon the land, there will be, at the very least, a *primâ facie* liability.

(2) If the airship passes over the land at a great height, *e. g.* one mile, without causing any actual damage, there will be no liability.

(3) If the airship passes so near to the land, or under such circumstances as to impair substantially the beneficial user of the land, there will be liability.

Of course the facts can be varied so as to raise some fine points which we do not here discuss. Nor do we consider under what circumstances the action of trespass *quare clausum fregit* would have been an appropriate remedy under the old forms of action.

If damage to land or person results from the use of the airship without negligence or other fault on the part of the navigator, is he absolutely liable? Mr. Hazeltine inclines towards absolute liability (pp. 83–86). Mr. Valentine writing with special regard to Scotch law, takes the opposite view.[3] Even upon Mr. Valentine's view, a liberal application of the *res ipsa loquitur* doctrine would often enable a plaintiff to make out a *primâ facie* case.

Ultimately, some questions, which are now open ones, will be made the subject of statutory enactments.[4] Mr. Valentine, however, deprecates the "premature interference of the legislature"; and urges delay until experience has made it plain what the problems are which are important to be thus dealt with.[5]

Mr. Hazeltine has made an excellent book, and must have spent much time in making himself acquainted with recent utterances on this modern topic. The leading theories and arguments are very clearly stated. J. S.

SELECT CASES BEFORE THE KING'S COUNCIL IN THE STAR CHAMBER. Vol. II. A. D. 1509–1544; edited for the Selden Society by I. S. Leadam. (Being Vol. XXV of the publications of the Selden Society). London: Bernard Quaritch. 1911. pp. cxxxiv, 382.

The Selden Society volume for 1910 carries us away again into the realms of economic and institutional history. There is substantially nothing in the volume which makes its appeal on the legal side. The text itself, like that of the preceding volume on the Star Chamber, consists of the petitions and other

[2] 22 Juridical Rev. 95–96.

[3] 22 Juridical Rev. 99–101. Compare Judge Baldwin in 4 Am. J. of International Law, 101–102.

[4] See Judge Baldwin in 4 Am. J. of International Law, 101; and Mr. Hazeltine's Third Lecture, 128–135.

[5] See 22 Juridical Rev. 103.